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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,086	10/28/2003	Bryan A. Lauer	Lauer 2 LUTZ 2 00242	4158
Richard J. Minnich, Esq. Fay, Sharpe, Fagan, Minnich & McKee, LLP Seventh Floor 1100 Superior Avenue Cleveland, OH 44114-2518				
EXAMINER				
ALIA, CURTIS A				
ART UNIT		PAPER NUMBER		
2616				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/695,086

Applicant(s)

LAUER, BRYAN A.

Examiner

Curtis A. Alia

Art Unit

2616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-16 and 26-29 is/are allowed.
- 6) ☒ Claim(s) 17-20 and 22-24 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Applicant's amendment filed 6 May 2008 has been entered. Claims 1, 5, 6, 9, 13-16 and 18 have been amended. Claims 1-24 and 26-29 are currently pending in this application, with claims 1, 6, 16, 17 and 26 being independent.

Response to Arguments

1. Applicant's arguments with respect to claims 1-24 and 26-29 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 17, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toskala '037 et al. (newly cited US 2003/0219037, hereinafter "Toskala '037 '037") in view of Toskala '037 et al. (newly cited US 2003/0232624, hereinafter "Toskala '037 '624").

Regarding claim 17, Toskala '037 discloses a network element operative to responding to a maximum bitrate request of user equipment of a subscriber, the network element comprising means for receiving a requested maximum bitrate attribute value (see paragraph 22, lines 11-21, the UE transmits a rate change request for the maximum rate) and means for offering to provide

communication services in association with a maximum bitrate value (see paragraph 25, lines 6-11, the Node B returns a response either accepting or dying the request for change in the maximum bitrate value) and that the maximum bitrate value is selected from a subset of a set of supported maximum bitrate values (see paragraph 23, the TFCS corresponds to a set of available/supported bit rates for the UE, each TFC corresponding to a subset of the set of available/supported bit rates).

Toskala '037 does not explicitly teach that the subset includes only those elements of the set of maximum bitrate values that are equal to or less than the maximum bitrate limit and that the selected value is equal to the value of the subset element that is greater than or equal to, the lower of the requested maximum bitrate value and the maximum bitrate limit, or has the highest value of the subset.

However, the above-mentioned claimed limitation is well known in the art, as evidenced by Toskala '624. In particular, Toskala '624 teaches that the subset includes only those elements of the set of maximum bitrate values that are equal to or less than the maximum bitrate limit and that the selected value is equal to the value of the subset element that is greater than or equal to, the lower of the requested maximum bitrate value and the maximum bitrate limit, or has the highest value of the subset (see paragraph 26, the UE threshold (requested maximum bitrate value) is less than the Node B threshold (maximum bitrate limit of the network), so the selected value is the value of the subset equal to the requested maximum bitrate (being one of the TFCs/subsets of the TFCS of Toskala '037)).

In view of the above, having the method of Toskala '037, then given the well-established teaching of Toskala '624, it would have been obvious to a person having ordinary skill in the art

at the time of the invention to modify the network element of Toskala '037 as taught by Toskala '624, since Toskala '624 stated in paragraph 9 that bottlenecks can be bypassed to improve performance and adaptation to network conditions.

Regarding claim 22, Toskala '037 discloses that the network element comprises an SGSN (see figure 1, the network of Toskala comprises an SGSN in the Core Network portion).

Regarding claim 24, Toskala '037 discloses that the network element comprises an RNC (see figure 1, the network of Toskala comprises an RNC 11).

4. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toskala '037 in view of Toskala '624 as applied to claim 17 above, and further in view of Iguchi et al. (newly cited US 2002/0147020).

Regarding claim 18, Toskala '037 and Toskala '624 do not explicitly teach means for determining a temporary working value from among the requested maximum bitrate attribute value and the maximum bitrate limit, means for determining whether the temporary working value is a network element supported value, above all network element supported values, below all network element supported values or between two network element supported values, and means for offering to provide communication services in association with the temporary working value if the temporary working value is a network element supported value.

However, the above-mentioned claimed limitation is well known in the art, as evidenced by Iguchi. In particular, Iguchi teaches means for determining a temporary working value from among the requested maximum bitrate attribute value and the maximum bitrate limit (see paragraph 84, the final requested bitrate Y is selected from the requested bitrate X and the maximum allowable bitrate limit Y, X if $X < Y$, and Y if $X > Y$), means for determining whether the temporary working value is a network element supported value, above all network element supported values, below all network element supported values or between two network element supported values (see paragraphs 140-142, it is determined whether the requested rate is greater than, less than or equal to the recommended rate (considered a supported rate)), and means for offering to provide communication services in association with the temporary working value if the temporary working value is a network element supported value (see paragraph 141, if the requested rate is equal then there is no indication of a change in the granted rate).

In view of the above, having the network element of Toskala '037 and Toskala '624, then given the well-established teaching of Iguchi, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the network element of Toskala '037 and Toskala '624 as taught by Iguchi, since Iguchi stated in paragraph 13 that efficient use of channels assigned with variable bandwidth can be achieved.

Regarding claim 19, Toskala '037 and Toskala '624 do not explicitly teach means for determining a temporary working value from among the requested maximum bitrate attribute value and the maximum bitrate limit, means for determining whether the temporary working value is a network element supported value, above all network element supported values, below

all network element supported values or between two network element supported values and means for offering to provide communication services in association with a highest network element supported value if the temporary working value is above all network element supported values.

However, the above-mentioned claimed limitation is well known in the art, as evidenced by Iguchi. In particular, Iguchi teaches means for determining a temporary working value from among the requested maximum bitrate attribute value and the maximum bitrate limit (see paragraph 84, the final requested bitrate Y is selected from the requested bitrate X and the maximum allowable bitrate limit Y, X if $X < Y$, and Y if $X > Y$), means for determining whether the temporary working value is a network element supported value, above all network element supported values, below all network element supported values or between two network element supported values (see paragraphs 140-142, it is determined whether the requested rate is greater than, less than or equal to the recommended rate (considered a supported rate)), and means for offering to provide communication services in association with a highest network element supported value if the temporary working value is above all network element supported values (see paragraph 84, the final requested bitrate Y is selected from the requested bitrate X and the maximum allowable bitrate limit Y, X if $X < Y$, and Y if $X > Y$, this step has already been performed so that the requested rate is never above all of the supported rates).

In view of the above, having the network element of Toskala '037 and Toskala '624, then given the well-established teaching of Iguchi, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the network element of Toskala

'037 and Toskala '624 as taught by Iguchi, since Iguchi stated in paragraph 13 that efficient use of channels assigned with variable bandwidth can be achieved.

Regarding claim 20, Toskala '037 and Toskala '624 do not explicitly teach means for determining a temporary working value from among the requested maximum bitrate attribute value and the maximum bitrate limit, means for determining whether the temporary working value is a network element supported value, above all network element supported values, below all network element supported values or between two network element supported values.

However, the above-mentioned claimed limitation is well known in the art, as evidenced by Iguchi. In particular, Iguchi teaches means for determining a temporary working value from among the requested maximum bitrate attribute value and the maximum bitrate limit (see paragraph 84, the final requested bitrate Y is selected from the requested bitrate X and the maximum allowable bitrate limit Y, $X \leq Y$, and Y if $X > Y$), means for determining whether the temporary working value is a network element supported value, above all network element supported values, below all network element supported values or between two network element supported values (see paragraphs 140-142, it is determined whether the requested rate is greater than, less than or equal to the recommended rate (considered a supported rate)).

In view of the above, having the network element of Toskala '037 and Toskala '624, then given the well-established teaching of Iguchi, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the network element of Toskala '037 and Toskala '624 as taught by Iguchi, since Iguchi stated in paragraph 13 that efficient use of channels assigned with variable bandwidth can be achieved.

Toskala '037, Toskala '624 and Iguchi do not explicitly teach means for offering to provide communication services in association with a lowest supported value if the temporary working value is below all network element supported values. However, it would have been obvious to a person having ordinary skill in the art at the time of the invention to apply the same rule for making sure the requested rate does not exceed the maximum rate limit to the minimum rate limit since it would comprises the same type of logic to perform the step on a minimum limit.

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toskala '037 in view of Toskala '624 as applied to claim 17 above, and further in view of Yuen (newly cited US 2003/0073437).

Regarding claim 23, Toskala '037 and Toskala '624 do not explicitly teach that the network element comprises a GGSN.

However, the above-mentioned claimed limitation is well known in the art, as evidenced by Yuen. In particular, Yuen teaches that the network element comprises a GGSN (see figure 1, GGSN is located in Core Network of a typical 3G UMTS network, same as Toskala).

In view of the above, having the network element of Toskala '037 and Toskala '624, then given the well-established teaching of Yuen, it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify the network element of Toskala '037 and Toskala '624 as taught by Yuen, since Yuen stated in paragraph 18 that this UMTS configuration is well-established in the art.

Allowable Subject Matter

6. Claims 1-16 and 26-29 are allowed.
7. Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis A. Alia whose telephone number is (571) 270-3116. The examiner can normally be reached on Monday through Friday, 9am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Aung S. Moe can be reached on (571) 272-7314. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aung S. Moe/
Supervisory Patent Examiner, Art Unit 2616

/Curtis A Alia/
Examiner, Art Unit 2616
8/19/2008

CAA